



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/167421

PRELIMINARY RECITALS

Pursuant to a petition filed July 20, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Rock County Department of Social Services in regard to Medical Assistance (MA) – related waiver program eligibility, a hearing was held on September 1, 2015, at Janesville, Wisconsin.

The issue for determination is whether the county agency correctly denied the petitioner's May 2015 application for MA-related Home and Community Based Waiver (Waiver) services, due to failure to fit within the developmentally disabled target group definition.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█
█

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], ADRC Spec.
Rock County Department of Social Services
1900 Center Avenue
P.O. Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.

2. The petitioner applied for MA Waiver services (e.g., COP Waiver) on May 6, 2015. To become eligible for such services, the recipient must initially fit within a target group and then undergo functional screening to determine whether she has functional care needs at the requisite level. The petitioner underwent such functional screening on May 11, 2015.
3. As a result of the 2015 functional screening, the county agency determined that the petitioner did not fit within a target group, based on her functioning, and was not functionally eligible for the program. On June 8, 2015, the Department issued notice to the petitioner advising her that she was not eligible due to her failure to satisfy the functional eligibility requirements of the program. The petitioner timely appealed.
4. The petitioner, age 31, has diagnoses of cerebral palsy, seizure disorder, chronic constipation, heart murmur, asthma, dysmenorrhea, depression, cervical lymphadenopathy, and rosacea. She receives MA and SSI disability benefits. For purposes of Waiver program eligibility, the petitioner has a “long-term condition.” She lives in the community with her mother.
5. The first two requirements for MA Waiver eligibility are that (1) a person fits within a “target group” definition, and (2) the person requires an institutional “level of care.” The potentially applicable target groups for a person of the petitioner’s age are those of (1) physical disability or (2) federally defined developmental disability. The petitioner has a substantial functional limitation in the domain of “capacity for independent living.” She does not have a substantial functional limitation in the domains of receptive/expressive communication, learning, self-direction or mobility. Because she is not deficient in at least three of these domains, the petitioner does not fit within the developmental disability target group.
6. *ADLs.* The petitioner is independent in bathing, dressing, grooming, eating, toileting, and transferring. She ambulates independently, and does not use a cane or walker. She has occasionally fallen, historically, due to balance deficits related to cerebral palsy.
7. *Instrumental ADLs.* The petitioner needs help with money management. She requires supervision, but not physical assistance, with laundry and household chores. The petitioner is capable of simple meal preparation, and is independent in taking medication and the use of a telephone. She has a driver’s license, but does not drive. The petitioner has part-time employment in a supportive setting (██████). She has adequate verbal communication, does not require overnight supervision, is not physically resistive to care, does not wander, has not demonstrated self-injurious behavior, is not violent towards others, and does not engage in substance abuse.

DISCUSSION

The MA Community Waiver Programs (e.g., Community Integration Program, Community Options Program - Waiver) are partially funded by the federal government through the Medical Assistance (MA) program. These Waiver programs must meet federal requirements, including MA regulations when applicable. To receive services through the Waiver programs, a person must be currently eligible for MA, fit within an elderly or disabled target group, and have institutional-level care needs. *Medicaid Eligibility Handbook (MEH)*, §28.1, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm> and the *MA HCB Waivers Manual (Manual)*, at <https://www.dhs.wisconsin.gov/waivermanual/index.htm>. The burden of proving eligibility rests with the new applicant.

To meet the functional eligibility requirement (*i.e.*, to have institutional-level care needs), a person must require some sort of in-home care or therapy that reaches a level of nursing facility care. *Manual*, §2.07; 42 C.F.R. §§ 435.217 & 435.441.301(b). To be found or remain eligible, the applicant must undergo an assessment of his/her needs and functioning.

However, the petitioner's application failed even before the level of care need evaluation was executed, because she does not fit within the developmental disability (federal) target group definition. *See*, Section 1915(i)(7) of the Social Security Act. In the distant past, the Department approved a person as belonging to a target group solely on the basis of a diagnosis, without looking at the functional impairments caused by the diagnosis. Per county testimony, cerebral palsy was such a diagnosis, conferring automatic target group eligibility. However, such automatic assignment to the target group no longer occurs, as functional ability is now considered.

To fit within the developmental disability target group, the applicant must have a disability which:

4. Results in a substantial functional limitation in three or more of the following seven areas:

- a. Self care
- b. Receptive or expressive language
- c. Learning
- d. Mobility
- e. Self direction
- f. Capacity for independent living
- g. Economic self-sufficiency

Manual, § 2.02B (2010).

The petitioner has not met her burden of showing that she has a substantial functional limitation in three of the above areas. Clearly, she can perform her self-care (*e.g.*, putting on clothes), and her speech was clear and logical at hearing. She did not establish substantial limitations in the domains of learning, mobility, or self-direction. There is a substantial limitation in her capacity for independent living, and her economic self-sufficiency is questionable. Thus, she did not meet the developmental disability definition, and her application was correctly denied.

As an aside, even if the petitioner had met the target group definition, her application would have failed at the next step—showing that her functioning is low enough to require an institutional level of care.

To improve functional/LOC assessment consistency statewide, the Wisconsin Department of Health Services installed a computerized functional assessment screening system. This system relies upon a face-to-face interview with a trained quality assurance screener who has experience working with long term care consumers. This screener asks the applicant questions about his/her medical conditions, needs, cares, skills, activities of daily living, and utilization of professional medical providers to meet these needs. The assessor then submits the "Functional Screen Report" to the Department. The Department runs the Long Term Functional Screen data (or "tool") through a computer program to see if the applicant/recipient meets any of the nursing levels of care. The LOC form was designed to incorporate the skeletal definitions from the federal Medicaid rules for Nursing Care and institutional Developmental Disability facilities.

The petitioner's diagnoses are not in dispute. The agency assessor determined in 2015 that the petitioner is able to perform her ADLs independently, as well as most IADLs. IADLs are defined at §DHS 10.13(32). When the petitioner's functional ability scores were entered into the DHS algorithm, the result was a DHS conclusion that the petitioner does not have care needs at the nursing home level.

The petitioner argues that she has care needs, due to poor balance and poor judgment, which make the MA Waiver program benefits necessary for her. In particular, she needs housekeeping and job-coach help.

Looking at legal definitions, rather than the computer program result, federal law requires that a person have care needs at an institutional level (hospital, nursing home) as a condition of adult MA Waiver eligibility. The petitioner did not argue that she has regular care needs that require hospitalization. Federal law defines a nursing facility as one which provides residents with skilled nursing care, rehabilitation services, or “on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, and is not primarily for the care and treatment of mental diseases.” 42 U.S.C. 1396r(a). *See*, in accord, Wis. Admin. Code § DHS 132.13(10), (31),(32). Of particular note is the requirement that a resident must need a health-related service above the level of room and board. Because laundry/housekeeping services are a “room and board” item, rather than a health-related service, the need for those services alone cannot qualify a person for MA Waiver services. Documentation of receipt of regular rehabilitation services (*e.g.*, physical therapy) is not in the record before me.

The petitioner is not receiving, and does not require, skilled or intermediate nursing care services. Therefore, the petitioner does not require nursing services, as defined under the MA rules above, and she would not pass the “level of care” test for MA Waiver services.

CONCLUSIONS OF LAW

1. The petitioner does not have functional deficits that are significant enough to place her in the federal developmental disability definition target group; therefore, her MA Waiver application was correctly denied.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

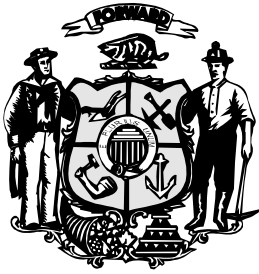
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 16th day of October, 2015

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 16, 2015.

Rock County Department of Social Services
Bureau of Long-Term Support